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May 17, 2013



Deborah Castillo
Manager of Marketing and Communications
North County Transit District (NCTD)
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Oceanside, CA 92054
Email: dcastillo@nctd.org

Tom Karlo
General Manager

Dear Ms. Castillo,

This letter responds to your May 2, 2013, letter. We are looking carefully at each point you raise and the documents NCTD has produced, and we will respond further to your request for certain statements we published to be retracted if warranted in the future.

Points You Raised:

"The Federal Transit Administration..." Point:

We shared your recent letter with our experts and they concluded that our points -- addressed to NCTD on April 16, 2013 and copied below -- remain valid. As we stated,

"We agree that FTA money can be obtained for planning purposes. But that **does not make the planning a capital project**, as evidenced in the FTA document you quote, at http://www.psrc.org/assets/471/2012_FTA_eligibility.pdf. The issue we addressed is whether NCTD is correct to show the "studies" on the capital budget, or whether it should have instead included them in the operating budget.

The FTA cites three types of activities eligible for funding:

1. Studies;
2. Capital investments in buses; and
3. Capital investments in rail.

As these three separate categories show, the FTA classifies "studies" separately from "capital investments."

Moreover, according to our experts, "studies" are generally operating expenses that must be included in the operating budget, whereas only "capital investments" belong in the capital budget."

We remain open to NCTD telling us specifically what is in error in our reporting on this point, and providing the supporting documentation to validate your position.

The “...letter from NCTD’s independent auditor, Pun & McGeadey...” Point:

Our experts have reviewed Kenneth Pun’s letter and NCTD’s response, and they have concluded that it is not relevant and that our point remains valid. Notably, Mr. Pun’s letter does not address the points made in our story, and it does not look at any of the studies mentioned in our article. Mr. Pun addressed only a Camp Pendleton project that was not even mentioned in the NCTD FY 2012 CIP budget.

Again, we remain open to NCTD telling us specifically what is in error in our reporting, and providing the supporting documentation to validate your position.

The Point: “During a May 1, 2013 interview Mr. Racino conducted with various NCTD managers, Mr. Tucker and Mr. Ryan Bailey, NCTD CFO, explained the difference between NCTD’s list of projects to be funded in our annual budget documents under the heading of CIP and the accounting treatment for such projects in the Comprehensive Annual Financial Report (CAFR).... NCTD properly accounts for FTA eligible studies and planning projects as operating expenses rather than capital projects.”

Again, our experts have concluded that our points regarding improper inclusion of “studies” in the capital budget remain valid for reasons set forth above. Additionally, as to NCTD’s argument, we note:

1. It directly contradicts NCTD’s own Capital Improvement Budget definition, as evidenced in the FY 2013 CIP on page 69:

Introduction to the Capital Improvement Program:

The Capital Improvement Program (CIP) is a financial plan of proposed capital projects.

2. It further contradicts NCTD’s April 5 letter asserting that federal funding allowed NCTD to consider the planning studies as capital expenditures, and it therefore did so.

3. Mr. Bailey also stated during his interview with us, “So we prepare on an annual basis, here’s a list of all projects in that book, it’s called CIP, that listing of projects is not all capital projects. **It’s operating and capital projects.**” As noted above, this assertion, too, contradicts NCTD’s CIP budget definition, and Mr. Bailey and Mr. Tucker have further admitted that NCTD is mixing operating and capital expenditures in its CIP budget.

4. In NCTD’s May 2 PowerPoint presentation to its Board, slide 13 lists “FY 2013 Studies Classified as Operating Expenses.” The slide lists 13 studies - six of which were included in the CIP and seven of which were not. NCTD therefore is indicating it has the right to include some studies in the capital budget and some in the operating budget.

In summary, our experts and our research have concluded the following:

-NCTD has an operating budget. Operating expenses, which include all studies that do not result in the placement of a fixed asset, go in the operating budget.

-NCTD has a capital budget. Capital projects, which result in the creation or revitalization of a fixed asset, go in the capital budget, as stated in NCTD's own definition of a capital budget.

-During the meeting on May 2, 2013, NCTD upper management clearly stated the studies were operating expenses, and that operating expenses are mixed in with the CIP budget.

As we further stated in our April 16 response:

--Ken Schermann, a senior official within the Governmental Accounting Standards Board, stated that NCTD's studies do not belong in a capital budget.

--Paul Scott, a forensic CPA in San Diego and a former CEO and CFO, stated that the studies do not belong in a capital budget.

In addition:

--The Metropolitan Transit System stated, through its spokesman Rob Schupp on May 6, 2013, that it does not include any studies in its capital budget.

Again, we remain open to NCTD telling us specifically what is in error in our reporting, and providing the supporting documentation to validate your position.

The "Contracted out maintenance of the SPRINTER..."Point:

We were wrong in reporting that Matthew Tucker "contracted out the maintenance of the SPRINTER vehicles to a private company, which then subcontracted out to another private company." The outsourced operations were already in place upon Tucker's arrival at NCTD. We regret this error and will publicly correct it.

The "Recruiting fees paid by NCTD" Points:

- **That Johnny Dunning... was an ancillary hire... we did not pay any fees for hiring Mr. Dunning.**

Per our email dated May 6, 2013, we asked you the following question, to which we have received no response:

"On our graphic, we listed \$20,000 paid to KL Executive Search for Johnny Dunning. There were two invoices totaling \$20,000 (August 2012 for \$10,000 and October 2012 for \$10,000) for a position called Deputy COO Service Planning that we received through our PRA request. Deputy COO appeared to be Mr. Dunning's title, per pg. 32 of the November 2012 Board Agenda (http://www.gonctd.com/userfiles/file/11_15_12_Board.pdf). If Mr. Dunning is not the person NCTD paid \$20,000 for, please tell us who that person is.

- **That Laynie Weaver- was hired by NCTD... NCTD did not pay any fees, nor was KL Executive Search involved.**

Per our email dated May 6, 2013, we also asked you the following question, to which we have received no response:

"On our graphic, we listed \$28,800 for Laynie Weaver, System Safety Officer. There were three invoices totaling \$28,800 (February 2012 for \$10,000, March 2012 for \$10,000, and April 2012 for \$8,800) for a position called System Safety Officer. If Ms. Weaver is not who NCTD paid \$28,800 for, please tell us let us know who that person is."

Per our email dated May 6, 2013, we also asked you the following question, to which we have received no response:

"Documents we received through a PRA request show you paid \$25,000 (January 2011 for \$10,000, April 2011 for \$10,000, and May 2011 for \$5,000) for a "Program Manager Positive Train Control" position. We did not include that in our graphic because we confirmed the information after publication. Please supply the name of that employee so we can add it to our list.

We also didn't know about the \$31,000 total-to-be-paid for a "Civil Rights Officer" position until we came across the invoice during our meeting Tuesday morning, May 7, 2013, in Oceanside. Please supply the name of that individual so we can update our published graphic.

Please provide the information requested, including documentation, no later than 5:00 p.m. on Monday, May 20, 2013, so we can address any errors that may exist.

Sincerely,



Tom Karlo
General Manager

CC:
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